

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury? Work disability is not at issue here as the parties have stipulated none is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulated that claimant suffered accidental injury to his right shoulder with an accident date of February 2, 1993. After this injury, but before claimant underwent surgery to his shoulder, he suffered an additional injury on August 5, 1993, which is addressed in Docket No. 180,369. In the present matter, claimant was assessed a 20 percent impairment to the upper extremity by Dr. Ernest Schlachter who opined that one-fourth of claimant's impairment to his right shoulder resulted from the injury of February 2, 1993, and preexisted the fall in August. The remaining three-fourths of claimant's impairment resulted from the August 5, 1993, fall.

In workers compensation matters it is claimant's burden to prove his entitlement to benefits by proving the various factors upon which his rights depend. See K.S.A. 44-501 and K.S.A. 44-508(g). Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). In this instance, the only medical evidence in the record dealing with claimant's original right shoulder injury is that of Dr. Schlachter. Dr. Schlachter found one-fourth of claimant's shoulder impairment to be attributable to the original injury. The 20 percent impairment to the upper extremity converts to a 13 percent whole body impairment. One-fourth of 13 percent is 3 percent which is the basis of the Award of the Administrative Law Judge.

The Appeals Board finds, based upon a review of the evidence, that claimant has suffered a 3 percent permanent partial general disability to the body as a whole as a result of the original injury to the right shoulder and the Award of the Administrative Law Judge is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated July 31, 1997, should be, and is hereby, affirmed for an accidental injury sustained to claimant's right shoulder on February 2, 1993, for a 3% permanent partial disability to the body as a whole, based upon an average weekly wage of \$788.86.

Claimant is entitled to 415 weeks permanent partial disability compensation at the rate of \$15.78 per week totaling \$6,548.70 making a total award of \$6,548.70. As of December 19, 1997, there would be due and owing to claimant 254.43 weeks permanent

partial disability compensation at the rate of \$15.78 per week in the sum of \$4,014.91 which is ordered paid in one lump sum minus amounts previously paid. Thereafter, the remaining balance of \$2,533.79 shall be paid at the rate of \$15.78 per week for 160.57 weeks until fully paid or until further order of the Director.

Claimant is entitled to unauthorized medical up to the statutory maximum upon presentation of an itemized statement verifying same.

Future medical will be awarded upon proper application to and approval by the Director.

Claimant's attorney fee contract is approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent, its insurance carrier, and the Kansas Workers Compensation Fund per the stipulation of the parties to be paid as follows:

Barber & Associates	
Transcript of regular hearing	\$148.60
Bannon & Associates	
Deposition of Ernest R. Schlachter, M.D.	(Ordered paid in Docket No. 180,369)

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Frederick L. Haag, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director